

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

## JOHNSTOWN

JEFFREY DENNIS,

**Plaintiff,**

VS.

SUPERINTENDENT BARRY SMITH, *et al.*

## Defendants.

) 3:20-CV-00017-LPL

District Judge Kim R. Gibson

Magistrate Judge Lisa P. Lenihan

ECF No. 90

## **MEMORANDUM ORDER**

The Complaint in the above captioned case was filed on February 7, 2020 and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 104) filed on August 2, 2022, recommended that the Motion to Dismiss the Second Amended Complaint (ECF No. 90) filed by the DOC Defendants be granted in part and denied in part. Specifically, the Magistrate Judge recommended that:

1. The motion to dismiss be granted as to Plaintiff's Eighth Amendment claims against Defendants Ginter, Miller, Acey, and Varner, and that these claims be dismissed with prejudice.
2. The motion to dismiss be denied as to the Eighth Amendment claims against Defendants Woolcock, Nyman, Boal, Lewis, Wetzel, Goodman, Dominic, Close, Shea, Kovac, Barrows, Salamon, Smith, Murarik, Brallier, McClellan, Srock, and Partsch.
3. The motion to dismiss be granted as to any state law claims Plaintiff may be asserting and that these claims be dismissed without prejudice to Plaintiff's right to bring these claims in state court.
4. The motion to dismiss be granted as to the official capacity claims asserted against all DOC Defendants and these claims be dismissed with prejudice.
5. The Fourteenth Amendment procedural due process claim against Defendants Wetzel and Varner be dismissed with prejudice.
6. The Fourteenth Amendment substantive due process claims against all DOC Defendants be dismissed with prejudice.
7. The Fourteenth Amendment equal protection claims against Defendants Wetzel and Varner be dismissed with prejudice.
8. Defendants Acey and Varner be terminated from this case.
9. Leave to file a third amended complaint be denied.
10. The remaining DOC Defendants be ordered to provide Plaintiff with the identities of John/Jane Does #1-3 if the District Court adopts this Report and Recommendation.

Service was made on Plaintiff via U.S. First Class Mail and on all counsel of record via CM/ECF. In the Report and Recommendation, the parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules

of Court, that registered users had fourteen (14) days to file any objections, and unregistered users had seventeen (17) days to file objections. No objections have been filed to the Report and Recommendation to date.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 24<sup>th</sup> day of August, 2022,

IT HEREBY ORDERED that the Motion to Dismiss the Second Amended Complaint (ECF No. 90) filed by the DOC Defendants is **GRANT IN PART** and **DENIED IN PART** as follows:

1. The Motion to Dismiss the Second Amended Complaint is **GRANTED** as to Plaintiff's Eighth Amendment claims against Defendants Ginter, Miller, Acey, and Varner, and these claims are **DISMISSED WITH PREJUDICE**.
2. The Motion to Dismiss the Second Amended Complaint is **DENIED** as to the Eighth Amendment claims against Defendants Woolcock, Nyman, Boal, Lewis, Wetzel, Goodman, Dominic, Close, Shea, Kovac, Barrows, Salamon, Smith, Murarik, Brallier, McClellan, Srock, and Partsch.
3. The Motion to Dismiss the Second Amended Complaint is **GRANTED** as to any state law claims Plaintiff may be asserting and these claims are **DISMISSED WITHOUT PREJUDICE** to Plaintiff's right to bring these claims in state court.
4. The Motion to Dismiss the Second Amended Complaint is **GRANTED** as to the official capacity claims asserted against all DOC Defendants and these claims are **DISMISSED WITH PREJUDICE**.

5. The Fourteenth Amendment procedural due process claim against Defendants Wetzel and Varner are **DISMISSED WITH PREJUDICE**.

6. The Fourteenth Amendment substantive due process claims against all DOC Defendants are **DISMISSED WITH PREJUDICE**.

7. The Fourteenth Amendment equal protection claims against Defendants Wetzel and Varner are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Defendants Acey and Varner are terminated from this case.

IT IS FURTHER ORDERED that leave to file a third amended complaint is **DENIED**.

IT IS FURTHER ORDERED that the remaining DOC Defendants shall provide Plaintiff with the identities of John/Jane Does #1-3 within ten (10) days of the date of this Order.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No.104) of Magistrate Judge Lenihan dated August 2, 2022 is adopted as the opinion of the Court.

BY THE COURT:



Kim R. Gibson  
United States District Judge

CC: JEFFREY DENNIS, PRO SE  
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